



TAX ADVISOR

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SUBSTANTIAL EXPANSION OF TAX PREPARER RULES ENSNARE LAWYERS PROVIDING ADVICE

February marks the traditional start of the tax filing season. While most client's attorneys are occupied elsewhere, what is actually being transcribed onto their client's tax returns, may now become a matter of riveting interest.

The IRS, tired of the "catch me if you can" strategy of taxpayers, has decided to invite more advisors to the annual Tax Penalty Party. Gone are the days where lawyers and accountants can provide various options for the clients and walk away unscathed.

- **Section 6694** is expanded to include all Tax Returns of every kind, not just income taxes.
- **Section 6694** is expanded to include any Advisor whose advice resulted in a tax deficiency from any entry, schedule or other portion of a tax return or claim for refund. This includes what you knew or more importantly, what the IRS felt *you should have known*.
- **Section 6694** penalties have been increased to the greater of \$1,000 or 50% of the income derived by the advisor.
- The penalty for willful or reckless conduct is the greater of \$5,000 or 50% of the income derived by the tax return prepared.
- The standard under **Section 6694** for disclosed positions has been raised from a "not frivolous" to a "reasonable basis" standard.
- The standard under **Section 6694** for non-disclosed positions was raised from the "realistic possibility" to a "reasonable belief that the position would more likely than not be sustained on its merits" (MLTN). The MLTN standards is defined as the preparer having a reasonable belief that there is a better than 50% change that the position taken on the tax return is correct.
- The MLTN for undisclosed positions creates a potential conflict between a preparer and a client, since the standard for undisclosed positions for clients is "substantial authority." The "substantial authority" standard requires a reasonable belief that there is a better than 33 1/3% change that the position is correct. Meaning that a client would not be required to disclose a position to avoid a penalty under section 6662(d), but the preparer would only be protected from a section 6694 penalty only if the position was disclosed.

What advice is Tax Advice? Tax Advice is any advice where the consequences of the advice are included on any type of tax return, either as income or a deduction, gift or transfer.

- Estate and Gift Planning
- Establishing, operating and liquidating Business Organizations
- Retirement Benefits and other benefits for Owners and Employees
- Employment Litigation
- Section 1031 Exchanges
- Charitable Gifts
- Foreclosure and Bankruptcy



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